

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:)	Examiner: Nancy Treptow VOGEL
)	
Audrey GODDARD et al.)	Art Unit: 1636
)	
Application No. 10/006,856)	Attorney's Docket No. GNE-2830-014
)	
Filing Date: December 06, 2001)	Customer No. 35489
)	
For: PRO1303 POLYPEPTIDES)	
)	
)	

FILED VIA EFS
ON APRIL 8, 2009

**REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT
UNDER 37 C.F.R. § 1.705(b)**

MAIL STOP: OFFICE OF PETITIONS

Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Dear Sir:

The *Determination of Patent Term Adjustment under 35 U.S.C. 154(b)* accompanying the Notice of Allowance and Fee(s) Due for United States Application No. 10/006,856, states that the PTA is "**137**" days. Applicants hereby notify the United States Patent and Trademark Office that the PTA cited under the *Determination of Patent Term Adjustment under 35 U.S.C. 154(b)* is believed to be in error, and request that the PTA accorded to the above-referenced patent be **1028** days.

REMARKS

Patent Term Adjustment

The total Patent Term Adjustment was noted as 137 days under the *Determination of Patent Term Adjustment under 35 U.S.C. 154(b)* on Notice of Allowance and Fee(s) Due for United States Application No. 10/006,856.

Under the opinion entered on September 30, 2008 in *Wyeth vs. Dudas* (Civil Action No. 07-1492), the U.S. District Court granted summary judgment to *Wyeth* concluding that the periods of time accorded under 35 U.S.C. 154(b)(1)(A) and under 35 U.S.C. 154(b)(1)(B) only “overlap” if they occur on the same day.

In reviewing the Patent Term Adjustment History for Application No. 10/006,856 as published in the PAIR system of the U.S. Patent and Trademark Office (USPTO), Applicants note that the 3-Year Date, which begins the time period under 35 U.S.C. 154(b)(1)(B), is December 6, 2004. Applicants further note that the time period under 35 U.S.C. 154(b)(1)(B) ends with the Request for Continued Examination (RCE) filed on October 04, 2007. Applicants conclude that there is no “overlap” of time accumulated under 35 U.S.C. 154(b)(1)(A) and 35 U.S.C. 154(b)(1)(B) since the delay under 35 U.S.C. 154(b)(1)(A) ends on July 1, 2004 before the 3-Year Date of December 6, 2004 and there is no further USPTO delay under 35 U.S.C. 154(b)(1)(A) after December 6, 2004. Applicants conclude that that there are 1032 days of additional PTA in accordance with the *Wyeth* decision.

However, Applicants note that 141 days were consumed by an Appellate Review starting from the filing of the Notice of Appeal on February 22, 2006 and ending with the mailing of the Non-Final Rejection on July, 13, 2006.

Due to the summary judgment under *Wyeth*, Applicants should be accorded 891 days (12/06/2005 to 10/04/2007 less the 141 days consumed by the Appellate Review from 02/22/2006 to 07/13/2006) of additional USPTO Three Year Delay.

The Total USPTO Delay should be corrected to 1402 days.

The Total Applicants' Delay equals 374 days

Thus, the Total Patent Term Adjustment is 1028 days in favor of Applicants.

The Applicants request that the USPTO recalculate the Patent Term Adjustment in view of the above remarks, and accord Applicants 1028 days of Patent Term Adjustment.

CONCLUSION

Applicants request that Patent Term Adjustment for United States Application No. 10/006,856 be corrected to 1028 days instead of the 137 days currently indicated in *Determination of Patent Term Adjustment under 35 U.S.C. 154(b)* on the Notice of Allowance and Fee(s) Due.

Applicants hereby authorize payment from Deposit Account No. 50-4634 (referencing Attorney's Docket No. GNE-2830-014) for the PTA adjustment request as set forth in 37 C.F.R. § 1.18(e). However, Applicants do not believe the \$200.00 charge for reconsideration of the PTA should be charged to the Applicants, as Applicants believe that no error was made on the part of the Applicants. Please deposit any refund, or, if applicable, charge any additional fees that may be due in connection with this application, to the afore-mentioned Deposit Account. Should there be any questions, please contact the undersigned at the correspondence address listed below.

Respectfully submitted,

Date: April 8, 2009

By: 
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